

THE HONORABLE JOHN J. CHUN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JAMES BYRON,

Plaintiff,

v.

INSTITUTE FOR ENVIRONMENTAL
HEALTH, INC.,

Defendant.

Case No. 2:18-01415-JHC

PRETRIAL ORDER

I. FEDERAL JURISDICTION

Jurisdiction is vested in this court by virtue of 28 U.S.C. § 1331 on the basis that this complaint presents federal questions under the Food Safety Modernization Act (“FSMA”), 21 U.S.C. § 399d. Plaintiff administratively exhausted his claims under the Food Safety Modernization Act in the United States Department of Labor, Occupational Safety and Health Administration, and thereafter in the Office of Administrative Law Judges (“OALJ”). The Secretary of Labor issued findings on August 14, 2013, and Plaintiff filed his Request for Hearing within 30 days of receipt of the Secretary’s findings on October 21, 2013.

On September 28, 2016, the Department of Labor Administrative Review Board reversed the OALJ’s dismissal of Plaintiff’s claim for lack of subject matter jurisdiction. On August 29,

1 2018, the OALJ, after waiting more than one year, issued an order denying the Defendant's motion
2 for summary decision.

3 More than 210 days lapsed since the filing of Plaintiff's DOL OSHA complaint on October
4 21, 2011, and no final order of the Secretary of Labor had been issued, thus Plaintiff exercised his
5 right under 21 U.S.C. § 399d(b)(4)(A) to file this action de novo in this United States District
6 Court.
7

8 **II. CLAIMS AND DEFENSES**

9 **1. Plaintiff's Claim**

10 Plaintiff will pursue at trial the following claim: violation of Section 402 of FSMA,
11 codified at 21 U.S.C. § 399d and the implementing regulations at 29 C.F.R. § 1987. As relevant
12 to Plaintiff's claim, 29 C.F.R. § 1987(a) provides that no entity engaged in the manufacture,
13 processing, packing, transporting, distribution, reception, holding, or importation of food may fire
14 an employee because he reports information relating to any violation of, or any act or omission the
15 employee reasonably believes to be a violation of any provision of, the Food, Drug, and Cosmetic
16 Act ("FDCA") or any order, rule, regulation, standard, or ban under the FDCA. *See id.*
17 § 1987(b)(2), (b) (4).
18

19 **2. Defendant's Affirmative Defenses**

20 In addition to its defense against Plaintiff's claim on the merits (e.g., that IEH is not a
21 covered entity under FSMA; Plaintiff did not engage in any protected activity; and Plaintiff cannot
22 establish that his separation was because of any protected activity), IEH will pursue the following
23 affirmative defenses to Plaintiff's claim:
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1 1. Plaintiff's claim is barred, in whole or in part, because IEH had an honest, good-faith
2 belief that all decisions with respect to Plaintiff's employment were made by Defendant solely
3 for legitimate, non-discriminatory, non-retaliatory, non-pretextual business related reasons, and
4 were reasonably based upon reasonable factors and/or the facts as IEH understood them.

5
6 2. Plaintiff's claim is barred, in whole or in part, because IEH exercised reasonable care to
7 prevent discriminatory and retaliatory behavior and Plaintiff unreasonably failed to take
8 advantage of preventative and corrective opportunities provided by IEH or to otherwise avoid
9 harm.

10 3. Plaintiff's right to relief is barred to the extent that he failed to mitigate his damages or
11 otherwise avoid harm.

12 4. Plaintiff's claim is barred, in whole or in part, because any losses Plaintiff has sustained
13 or will sustain are due to Plaintiff's own failures and omissions, and Plaintiff's own conduct or
14 negligence.

15
16 5. Plaintiff's claim is frivolous, unreasonable, and groundless and, accordingly, IEH should
17 recover all costs and attorneys' fees incurred herein.

18 **III. ADMITTED FACTS**

19 1. Defendant IEH is a private company that provides laboratory testing services for the food
20 industry, including microbial, toxin, allergen and import detention testing for its clients.

21 2. Dr. Mansour Samadpour founded IEH with his wife, Ms. Dalia Alfi, in 2000.

22 3. Defendant is an independent third-party laboratory that performs technical services,
23 including sample testing and consulting for clients in the food industry.
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1 4. The great majority of the food released into the chain of commerce by food manufacturers
2 is never tested for pathogens.

3 5. Plaintiff worked for IEH as a salesman from February 2010 until his employment was
4 terminated in October 2011.

5 6. At IEH, Plaintiff's job duties were all sales-related and included working to secure new
6 accounts through meetings and presentations to prospective customers. As part of his duty to
7 generate sales for IEH from prospective customers, Plaintiff would make phone calls, send emails,
8 and attend trade shows and client meetings to solicit new customers for IEH.

9 10 7. Plaintiff's annual salary at IEH was \$150,000, and Plaintiff had the potential to receive an
11 annual bonus of \$30,000.

12 8. Plaintiff did not receive an annual bonus after his first year with IEH.

13 9. Plaintiff and IEH disagreed regarding the amount of revenue that Plaintiff generated for
14 IEH from new clients.

15 10. In or around mid-2011, Dr. Samadpour asked Plaintiff to begin providing Dr. Samadpour
16 weekly updates of Plaintiff's activities.

17 11. In May 2011, Dr. Jaspreet Sidhu ("Dr. Sidhu") and Plaintiff both attended a trade show in
18 Secaucus, New Jersey, and had dinner the night of the trade show.

19 12. John Van Arsdale ("Van Arsdale") was employed by Defendant as a Business
20 Development Manager.

21 13. In 2011, Plaintiff arranged a sales meeting with McCormick Spice to discuss IEH's
22 capabilities for spice testing. Dr. Samuel Myoda prepared a slideshow prior to the meeting which
23 he showed to Plaintiff.

1 14. The Presentation contained a slide that stated, “53 of 55 spices tested worked with the
2 modified enrichment methods” and there were “2 exceptions: Natural Meat Flavor and Cloves;
3 both exhibited antimicrobial properties that inhibited the growth of the bacteria to the extent that
4 neither the culture based nor the PCR methodologies detected the low level of the inoculum.”

5 15. Another slide showed the Association of Official Analytical Chemists (“AOAC”)
6 certificate for the IEH E. Coli 0157, Stx-producing E. Coli (STEC) with Intimin and Salmonella
7 Test System.
8

9 16. The AOAC is one of the industry recognized certification bodies for accreditation of test
10 kits used in testing foods in the United States. The AOAC provides certification that the test kits
11 meet standards for accuracy, reliability, and compliance.
12

13 17. The Food and Drug Administration (“FDA”) and U.S. Department of Agriculture
14 (“USDA”) Food Safety and Inspection Service (“FSIS”) regulate the food industry in the United
15 States. ISO is an independent non-governmental international organization with a membership of
16 167 national standards bodies involved in creating standards, including those for food safety.

17 18. To perform work for McCormick, i.e., testing spice samples for the presence of Salmonella,
18 IEH needed to validate its Salmonella testing method would be able to detect Salmonella in each
19 of its spices.
20

21 19. In order to validate its test, IEH was required to perform a “matrix extension” of its
22 Salmonella testing method. A “matrix extension” is a small validation study that compares the
23 performance of the proposed method (in this case the IEH method for Salmonella) to the FDA
24 method in testing a given type of food for which the method was not previously validated.
25

1 20. After the meeting, IEH began working on a matrix extension validation of its Salmonella
2 testing method for McCormick's spices.

3 21. On August 15, 2011, Dr. Samadpour reminded Plaintiff that he needed to continue sending
4 his weekly reports.

5 22. Approximately two months after the meeting, IEH started to validate the first spice (black
6 pepper).

7 23. Dr. Samadpour assigned Ruth Cantera, one of IEH's scientists, to begin work on the matrix
8 extension validation study.

9 24. On August 29, 2011, Ms. Cantera called Dr. Samadpour regarding the design of the matrix
10 extension validation study provided by Plaintiff. Ms. Cantera stated that Plaintiff asked her to
11 inoculate 3 sets of 25 x 375 gram samples of whole black pepper with Salmonella and test them
12 with the IEH method.

13 25. Dr. Samadpour told Ms. Cantera that Plaintiff's study design was wrong and to follow the
14 AOAC protocol of inoculating a set of 25 x 375 grams and another set of 25 x 25 grams.

15 26. Ms. Cantera informed Plaintiff that she intended to use 25 x 375 grams of each spice for
16 the study along-side the FDA method which required a set of 25 x 25 grams.

17 27. Ms. Cantera informed Plaintiff that she would buy ground black pepper and prepare
18 everything to proceed with the inoculation.

19 28. Dr. Samadpour called Plaintiff on October 4, 2011.

20 29. During that phone call, Dr. Samadpour stated his decision to terminate Plaintiff's
21 employment. Plaintiff asked Dr. Samadpour to think about his termination and to talk to him the
22 next day, which Dr. Samadpour agreed to.

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1 30. Dr. Samadpour informed Plaintiff that “[t]his [was] not working.” According to Plaintiff,
2 Dr. Samadpour explained that he did not want sales staff anymore and wanted to go back to the
3 “old way” of doing things at IEH.

4 31. Dr. Samadpour informed Plaintiff the following day, October 5, 2011, that he was
5 terminating his employment.
6

7 32. Plaintiff asked for a severance package. IEH ultimately did not provide one.

8 33. On October 21, 2011, Plaintiff filed an administrative complaint with the DOL-OSHA
9 alleging that his termination was in retaliation for his raising concerns about and/or objecting to
10 Salmonella testing practices.

11 34. In his administrative Complaint, Plaintiff alleged that he was fired in violation of the
12 employee protection provision of FSMA.
13

14 **IV. ISSUES OF LAW**

15 This is a jury trial. Given the Court’s rulings on summary judgment and the parties’
16 motions in limine, there are no legal issues pending before the Court. The parties have
17 disagreements about the available and appropriate use of deposition transcripts. Plaintiff’s position
18 is that he may use deposition transcripts of present and former IEH employees during his cross-
19 examination of the co-CEOs. Defendant’s position is that Plaintiff cannot impeach a witness with
20 the deposition transcript of another witness. Defendant’s position is also that Plaintiff cannot offer
21 deposition transcripts of individuals that are available for trial.
22

23 The parties reserve all rights to raise issues of law to the Court based on the jury instructions
24 and verdict form. Defendant reserves its right to raise issues of law to the Court based on Plaintiff’s
25 case in chief and any failure to meet the elements necessary for Plaintiff to sustain his claim.

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1 **V. EXPERT WITNESSES**

2 Plaintiff will offer one expert witness to testify as to all items covered in his expert report,
3 including damages, and the lost earnings and benefits of James Byron: Paul Torelli, Quantitative
4 Social Science, 200 First Ave W, Suite 109, Seattle, WA 98119.

5 **VI. OTHER WITNESSES**

6 (a) On behalf of Plaintiff:

7 1. Mr. James Byron, P.O. Box 1061, Medford, OR 97501, will testify concerning all
8 claims and elements, including but not limited to: (a) his background, knowledge, and
9 qualifications; (b) his duties and performance with Defendant, including the terms and conditions
10 of his employment; (c) his protected disclosures; (d) the adverse actions taken against him; (e)
11 causation; and (f) damages.

12
13 2. Dr. Mansour Samadpour, President of IEH, IEH Laboratories, 15300 Bothell Way
14 NE, Lake Forest Park, WA 98155, will testify to elements including knowledge and causation,
15 including his knowledge of Plaintiff's protected activity and his actions in response to said
16 concerns, including Plaintiff's concerns with IEH testing practices and Plaintiff's reports regarding
17 the requirements imposed by McCormick to validate the Defendant's testing method using 375
18 gram samples.

19
20 3. Dalia Alfi, Vice President of IEH, IEH Laboratories, 15300 Bothell Way NE,
21 Lake Forest Park, WA 98155 (800) 491-7745, will testify as to Plaintiff's performance, sales
22 activity, protected activity and termination and Defendant's relevant employment policies and
23 practices.
24
25
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1 4. Dr. Jaspreet Sidhu, Vice President of Business Development and Pharmaceutical
2 Microbiology of IEH, IEH Laboratories, 15300 Bothell Way NE, Lake Forest Park, WA 98155
3 (800) 491-7745, possible witness only, may testify as to Plaintiff's performance,
4 contact/communications with current and prospective clients, sales activity, and protected activity.

5 5. Dr. Samuel Myoda, the Chief Operating Officer at Institute for Environmental
6 Health of the Produce Division of IEH, IEH Laboratories, 15300 Bothell Way NE, Lake Forest
7 Park, WA 98155, will testify as to Plaintiff's performance; contact/communications with current
8 and prospective clients; sales activity; meetings and communications with McCormick and
9 Plaintiff; Plaintiff's objections to claims made by IEH to McCormick; and Plaintiff's objections
10 to IEH's failure to properly validate tests for spices.
11

12 6. Dr. Mohammad Koohmaraie, Chief Executive Officer (CEO) of the Meat Division
13 of IEH, IEH Laboratories, 15300 Bothell Way NE, Lake Forest Park, WA 98155, will testify as
14 to Plaintiff's performance, contact/communications with current and prospective clients, sales
15 activity, and protected activity.
16

17 7. Dr. Robert Miksch, former Senior Vice President of Technical Services of IEH,
18 IEH Laboratories, 15300 Bothell Way NE, Lake Forest Park, WA 98155, possible witness only.
19 Dr. Miksch may testify as to the technical support he provided to Plaintiff and his knowledge of
20 Plaintiff's concerns and termination.
21

22 8. Dr. Margaret Hardin, Vice President of Technical Services of IEH, IEH
23 Laboratories, 15300 Bothell Way NE, Lake Forest Park, WA 98155, possible witness only, may
24 testify as to provision of technical support to Plaintiff, and her knowledge of Plaintiff's
25 employment and termination.
26

1 9. John Van Arsdale, formerly the Vice President of Business Development, IEH,
2 possible witness only, Mr. VanArsdale may testify as to his disclosures and communications with
3 Plaintiff about concerns with IEH testing and sampling practices.

4 10. Pete Mostoufi, Project Manager of IEH Analytical, IEH Laboratories, 15300
5 Bothell Way NE, Lake Forest Park, WA 98155, possible witness only, may testify as to
6 Plaintiff's contact with Los Banos and Fonterra and the testing and invoices for those clients.

7 11. Ruth Canterra, Laboratory Analyst of IEH, IEH Laboratories, 15300 Bothell Way
8 NE Lake Forest Park, WA 98155, possible witness only, may testify as to Mr. Byron's objections
9 to the testing related to the McCormick spice presentation.

10 12. Jennifer Byron, 18 Cove Road, Ponte Vedra Beach, FL 32082, possible witness
11 only. Mrs. Byron would testify to the mental and emotional stress of her husband, the symptoms
12 she observed, the conversations she had about his distress and her personal observations of the
13 changes she observed in her husband after IEH's termination of him.

14 13. Alexandra Byron, 1133 N. 4th Street, Apt 306, Philadelphia, PA 19123, possible
15 witness only. Ms. Byron may testify as to the mental and emotional stress of her father and can
16 testify as to the symptoms she observed, the conversations she had about his distress and
17 symptoms, and her personal observations of the changes she observed in her father after IEH's
18 termination of him.

19 14. Austin Byron, possible witness only. Mr. Byron may testify as to the mental and
20 emotional stress of his father and can testify as to the symptoms he observed, the conversations
21 he had about the distress and symptoms, and his personal observations of the changes he
22 observed in his father after IEH's termination of Byron.

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15. Dr. Charmaine Aguirre, St. Vincent Primary Care, 1100 Sawgrass Village Dr. #100, Ponte Vedra Beach, FL 32082, possible witness only, Dr. Aguirre may testify as to her diagnosis and treatment of Plaintiff.

Should Plaintiff provide appropriate notice of his intent to call those witnesses, Defendant has agreed to make available for trial the following current IEH employees without need of a subpoena: Mansour Samadpour, Dalia Alfi, Samuel Myoda, Mohammad Koohmaraie, Margaret Hardin, Pete Mostoufi, and Ruth Cantera.

(b) On behalf of Defendant:

Witness	Contact Information	General Nature of Testimony	Will Testify	May Testify
Dalia Alfi	c/o Morgan, Lewis & Bockius LLP, 1301 Second Avenue, Suite 2800, Seattle, WA 98101	Ms. Alfi may testify regarding IEH's work, her interactions with Plaintiff, Plaintiff's work performance, Plaintiff's travel expenses, and the circumstances surrounding the termination of Plaintiff's employment.		X
Ruth Cantera	c/o Morgan, Lewis & Bockius LLP, 1301 Second Avenue, Suite 2800, Seattle, WA 98101	Ms. Cantera may testify regarding testing related to the McCormick spice presentation.		X
Dr. Margaret Hardin	c/o Morgan, Lewis & Bockius LLP, 1301 Second Avenue, Suite 2800, Seattle, WA 98101	Dr. Hardin may testify regarding her experience answering Plaintiff's technical questions, providing Plaintiff with supporting materials for current and prospective clients, and her interactions with Plaintiff.		X
Dr. Mohammad Koohmaraie	c/o Morgan, Lewis & Bockius LLP, 1301 Second Avenue, Suite	Dr. Koohmarie will testify regarding his interactions with Plaintiff, his interactions with IEH management regarding	X	

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	2800, Seattle, WA 98101	Plaintiff, Plaintiff's work performance, Plaintiff's contact with current and prospective clients, and IEH's work including in the sales of food testing and consulting services and method validation.		
Pete Mostoufi	c/o Morgan, Lewis & Bockius LLP, 1301 Second Avenue, Suite 2800, Seattle, WA 98101	Mr. Mostoufi may testify regarding his interactions with Plaintiff, his interactions with IEH management regarding Plaintiff, Plaintiff's work performance, Plaintiff's contact with current and prospective clients, and IEH's work including in the sales of food testing and consulting services and method validation.		X
Dr. Samuel Myoda	c/o Morgan, Lewis & Bockius LLP, 1301 Second Avenue, Suite 2800, Seattle, WA 98101	Dr. Myoda will testify regarding his interactions with Plaintiff, his interactions with IEH management regarding Plaintiff, Plaintiff's work performance, Plaintiff's contact with current and prospective clients, and IEH's work including in the sales of food testing and consulting services and method validation.	X	
Dr. Mansour Samadpour	c/o Morgan, Lewis & Bockius LLP, 1301 Second Avenue, Suite 2800, Seattle, WA 98101	Dr. Samadpour will testify regarding Plaintiff's work performance, Plaintiff's contact with current and prospective clients, the circumstances surrounding the termination of Plaintiff's employment with IEH and former employer, Food Safety Net Services, and IEH's work including in the sales of food testing and consulting services and the development of method validation.	X	

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Dr. Jaspreet Sidhu	4715 NE 100th St, Seattle WA 98125	Dr. Sidhu may testify regarding Plaintiff's work performance, Dr. Sidhu's interactions with Plaintiff, feedback Dr. Sidhu provided regarding Plaintiff, and Plaintiff's contact with current and prospective clients.		X
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VII. PLAINTIFF'S EXHIBITS

PX	Date	Description	Bates	Admissibility Stipulation*	Authenticity Stipulation
1		Resume for IEH Position	IEH 20-21		X
2	1/29/10	Email from Samadpour re compensation-1	JB 746	X	X
3	2/15/10	Available Benefits Record: LTD, STD, Life insurance, Dental, Accidental Death & Dismemberment	IEH 44-45		X
4	2/16/10	New Hire Information Sheet starting 150K/year	IEH 28	X	X
5	2/17/10	Basic Safety Rules of the Lab	IEH 34-35		X
6		Job Position Description-2	IEH 12126-12128		X
7	9/21/10	Email to Fonterra	IEH 9059-9071		X
8	9/25/10	Email re American Beef Packers-3 (Depo Ex. 31)	JB 224		X
9	11/1/10	Email from Byron to Mansour re shift in test methods for Agristar	IEH 551-552	*	X
10	12/3/10	Invoice to Hempler's	IEH 1299-1303		X
11	12/7/10	Emails re protein method used at IEH-4	JB 98-102, 96-99		X
12	12/15/10	Emails discussing high variability on protein runs	IEH 9183-9184		X
13	1/23/11	Email Chain with Byron and Myoda re invoice from JL Analytical -5	JB 132-133		X
14	1/27/11	Email from Byron with IEH OMS 012011	IEH 9145-9149		X

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15	2/2/11	Process Control Index, PCI - A New Analytical Tool to Advance Process Control in Food Manufacturing Process Control Gel Image	IEH 442- 476 IEH 450		X
16	2/10/11	WD			
17	2/10/11	Email Chain with Byron and Koohmaraie RE: Lonestar Revenue Calculations-7	JB 44-45		X
18	2/24/11	Quote for National Packaging Co.	IEH 477- 478		X
19	2/25/11	Email chain re Lone Star Beef quote -8	JB 46-47		X
20	2/25/11	Email re Lone Star Beef client-9	Byron 778- 779		X
21	3/17/11	Email chain from Myoda re Bubba Burger-10	JB 181		X
22	3/17/11	Email chain from Khoomarie re Bubba Burger-11	JB 182-183		X
23	4/2/11	Email from Byron re Centennial/Trochu/Western Quality	IEH 618- 620		X
24	4/6/11	Email chain with Samadpour re Fonterra-12	Byron 760- 762		X
25	4/8/11	Email re McCormick Spice meeting-13	JB 25-26	X	X
26	4/13/11	Emails re Fonterra	IEH 9484- 9488		X
27	4/8/11	Emails re Lonestar Equipment Purchase detail-14	JB 38-39		X
28	4/18/11	Email re comparing to Silliker**	IEH 1775- 1778		X
29	4/21/11	Email re pricing -16	JB 287-289		X
30	4/24/11	Email re 2010 Performance Highlights and Bonus-17	IEH 2930- 2932	X	X
31	4/25/11	Email from Mostoufi to Byron re LBF/Fonterra Sample Volumes-18	JB 113		X
32	4/28/11	Email re Lone Star Beef Contract Update-19	JB 42-43		X

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33	5/2/11	Email re Food Quality Contract Lab Product Focus-20	JB 190-191		X
34	5/4/11	Letter from Byron to NXT Nutritionals	IEH 483-484		X
35	5/4/11	Email from Byron to Koohmaraie re Lone Star-21	JB 510-512		X
36	5/9/11	Email from Mostoufi to Byron re Los Banos Foods/Fonterra-22	JB 114		X
37	5/12/11	Email re Meeting Request - 23. (Byron 3-14-17 depo, Ex. 10)	IEH 11377-11379		X
38	5/12/11	Email to Byron re Top 10 Spices and Top Salmonella serotypes involved in recalls of contaminated spices	IEH 1275-1276		X
39	5/13/11	Email re: McCormick meeting -24 [Byron 3-11-17 deposition, Ex. 11]	JB 28		X
40	5/13/11	Email re testing methods -25	JB192- 194		X
41	5/20/11	Business Travel and Expense Policy	IEH 202-207		X
42	6/1/2011	Email From Byron to Myoda re Fonterra	IEH 4660-4663		X
43	6/2/11	Email from Byron to Myoda re work w Dietz and Watson	IEH 562		X
44	6/8/11	Letter to Burt Lewis Ingredients -26	Byron 764-765		X
45	6/8/11	Email re Intro meeting with McCormick-27	JB 29-30	X	X
46	6/9/11	Email from Byron re new customer Burt Lewis Ingredients	IEH 9132		X
47	6/9/11	Email between Myoda and Byron re Quote -28	JB 77		X
48	6/9/11	Email between Myoda and Byron re Quote-29	JB 763		
49	6/9/11	Email re Fonterra supplier -30	IEH 6099-6100		X
50	6/10/11	W/D			
51	6/10/11	Email re Fonterra Billing-33	JB 234-236		X

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52	6/10/11	Email re FDA BAM Salmonella -32	Byron 766		X
53	6/11/11	Email re Saturday calls -34	JB 198		X
54	6/13/11	Email re Fonterra Micro Test Panels-35	JB 115-116		X
55	6/13/11	Email re travel form and travel policy: IEH implementing a new travel policy for everyone -36	IEH 174-175		X
56	6/14/11	Email re Fonterra Sampling-37			
57	6/14/11	Email re: travel for Jacksonville and Omaha	IEH 178 /IEH 242		X
58	6/14/11	Email re travel approval-38			
59	6/14/11	W/D			
60	6/23/11	Email from Byron re Centennial Foods	IEH 525		X
61	6/24/11	Travel to Jacksonville	IEH 171		X
62	6/28/11	Email from Byron re invoices withheld-39	JB 117		X
63	7/1/11	McCormick Presentation-40	IEH11280-11317	X	X
64	7/2/11	Email re McCormick presentation -41	IEH 11464	X	X
65	7/5/11	Analytical Platform & Available Test Comparison	IEH 1319-1370		X
66	7/6/11	Email Lawrence to Byron re spice stuff-42	JB 310-312		X
67	7/7/11	Emails with Byron and McCormick -43	JB 31-33	X	X
68	7/7/11	Email and attachment "McCormick Letter"-44	JB 314-316	X	X
69	7/8/11	Letter to McCormick Spice -45	JB 314-316	X	X
70	7/8/11	Email re important pricing decision-46	JB 250-254		X
71	7/13/11	Letter to McCormick Spice-(Depo Ex. 19) -47	JB 319-323		X
72	7/18/11	Letter to Centennial with Quote	IEH 629-630		X
73	7/18/11	Email re McCormick Spice detail	JB 34-35	X	X
74	8/11	Myoda email re test options*	IEH 1477		X

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75	8/15/11	Email from Byron to all	JB 208		X
76	8/15/11	Samadpour email to Byron Sales activity report every week	IEH 1664	X	X
77	8/22/11	Email from Byron re Weekly Activity Summary	IEH 1164	X	X
78	8/26/11	Email from Byron re Weekly Activity Summary	IEH 2952	X	X
79	8/30/11	Email from Alfi to Koohmarie, Byron, et al RE: Traveling/meeting for meat/beef related activities	IEH 162		X
80	8/30/11	Email from Byron re McCormick update	JB 22-23	X	X
81	8/30/11	Email from Byron re McCormick request	JB 24	X	X
82	8/30/11	Email chain with Byron expressing concerns to Mansour about McCormick testing validation being inadequate	Byron 528- 530	X	X
83	8/31/11	Email chain from Cantera to Byron describing spice validation plans , Dep Ex. 17	Byron 532- 533	X	X
84	8/31/11	Email chains between Byron requesting information from Samadpour about IEH methods and molecular targets for tests, Dep Ex. 18	JB 395-396	X	X
85	9/8/11	Email indicating McCormick desire to enter confidentiality agreement	JB 398		X
86	9/8/11	Guidelines for the Validation of Analytical Methods for the Detection of Microbial Pathogens in Foods [Myoda Ex. 8]	Byron-IEH 641-695		X
87	9/8/11	Email from Byron re IAFP	IEH 1137		X
88	9/12/11	Email from Byron re Weekly Activity Summary	IEH 2953	X	X
89	9/15/11	Email from Byron to Campbell Soup	IEH 1406- 1411		X

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90	9/19/11	Emails regarding travel for trade show	IEH 237		X
91	9/23/11	Emails re Nestle PCT Discussion and Presentation *	IEH 957-991		X
92	9/24/11	Receipt for Baltimore itinerary *	IEH 252-253		X
93	9/26/11	Email from Byron to Mansour*	IEH 1014-1016		X
94	9/26/11	Email from Byron to Samadpour re LSB	[JB 507-509]		X
95	9/29/11	Byron Email to Koohmarie re Bubba and Perdue*	IEH 605		X
96	10/4/11	Byron Correspondence and invoice with Kaltron Pettibone Incorporated*	IEH 487-488 [JB 518-519]		X
97	10/4/11	Laundry email to Byron to call Mansour	IEH 1567		X
98	10/4/11-10/5/11	Notes from conversations with Samadpour and VanArsdale	JB 442-444		
99	10/5/11	Email from Byron to Samadpour (Depo Ex. 25)	JB 450-451		X
100	10/5/11	Termination Letter	JB 456-457		X
100a	10/6/11	Email re separation	JB 468	X	X
100b	10/17/11	Notes re OSHA calls	JB 472		
101	10/18/11	Email from Miksch	JB 474		X
102	10/26/11	Letter from Byron to Samadpour	IEH 18-19	X	X
103	11/4/11	Notes from Conversation with Hardin	--		
104	11/7/11	Checklist for Employment Termination	IEH 22-23	X	X
105	2012	Client spreadsheets: including Fonterra, Los Banos Foods, Burt Lewis Ingredients	IEH 433-441		X
106		Client spreadsheets: including Fonterra, Los Banos Foods	IEH 1810-1822		X
107		Client Spreadsheets	Byron 181-185, Byron 19		
108		FSIS Guidance for Evaluating Test Kit Performance	--		

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109		Declaration re patent application: Test methods list	JB 487-494		
110		Ground Pepper Validation Study for the Detection of Salmonella (Byron 7-11-19 Depo., Ex. 10)	Byron 541-543/Byron IEH 581-583		
111		Bacteriological Analytical Manual Chapter 5	---		
112		ISO 16140-2	Byron 683-757		
113		Federal Food, Drug, and Cosmetic Act (Byron 7-11-19 Depo, Ex. 11)	Byron 548-568		
114		RCW 9A.32.070 Byron 7-11-19 Depo, Ex. 12)	Byron 545		
115	7/11/19	RCW 9A.32.060 (Byron 7-11-19 Depo, Ex. 13)	Byron 544		
116		US v. Park Byron 7-11-19 Depo, Ex. 14)	Byron 546-547, 569-594		
117		Tax Returns, Economic Loss Documentation 2012-2021	Byron 342-456, F. 2 106-163	X	X
118		Economic Damages Report of Paul Torelli	---		
119		Job Search Emails, Job Search Log and Supporting Records	Byron 31-100	X	X
120		Medical Records: St Vincents, Charmaine Aguirre	Byron 333-341		X
121		Defendant/Respondent Discovery Responses excerpts			
122		Deposition Exhibits:			
122a		IEH E. coli O157 Test System: Amendment to extend AOAC Performance Tested Method (Myoda, Ex. 6)	Byron_IEH 606-639		X
122b	5/12/11	McCormick Communications (Samadpour Depo. Ex 8)	IEH 11377-11379		X

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123	9/8/11	Highlighting/ Presentation from Guidelines for the Validation of Analytical Methods for the Detection of Microbial Pathogens in Foods			
124		Plaintiff Presentation: Testing			
125		Plaintiff publication re Listeria	JB 482-485		
126		Restated Complaint (Plaintiff Depo 3/14/17, Ex. 9)			

* For those exhibits where Defendant has not agreed to authenticity and/or admissibility, it will provide written notice briefly stating any objections including the grounds thereof as reflected in the CLR 16.1 form of pretrial order by November 11, 2022.

Plaintiff reserves the right to offer additional exhibits at trial to the extent necessary to rebut evidence offered by Defendant or as justice may require. Plaintiff also reserves the right to rely on demonstrative exhibits not listed in the above table for use at trial.

VIII. DEFENDANT'S EXHIBITS

Defendant intends to present its exhibits electronically to the jury.

No.	Date	Description	Admissibility Stipulation*	Authenticity Stipulation
500	2/20/2010	Confidentiality Agreement Executed by J. Byron Bates-stamped IEH000060 – IEH000070	X*	X
501	6/30/2010	Email from S. Myoda to J. Byron RE: salmonella testing Bates-stamped IEH002453	X*	X
502	1/9/2011	Email from J. Byron to M. Samadpour Bates-stamped JB00141	X*	X
503	1/25/2011	Email from M. Samadpour to G. Zeidler RE: Burger King Visit Bates-stamped IEH001690	X*	X

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No.	Date	Description	Admissibility Stipulation*	Authenticity Stipulation
504	2/3/2011	Email from J. Byron to M. Samadpour Bates-stamped IEH010928 – IEH010931	X*	X
505	3/31/2011	Email from J. Byron to J. Sidhu FW: Latest Trade Show List Attached Bates-stamped IEH010970 – IEH010977	X*	X
506	04/06/2011	Email from M. Samadpour to T. Bui (CC: B. Cummings, S. Myoda, J. Byron, D. Alfi, M. Wolf, P. Mostoufi, and B. Nadala) RE: Fonterra Bates-stamped JB00554 – JB00556	X*	X
507	5/30/2011	Email from M. Samadpour to J. Byron, S. Myoda, P. Mostoufi, and others RE: Cyanuric Acid Analysis Error Bates-stamped IEH009347 – IEH009354	X*	X
508	6/11/2011	Email from M. Samadpour to S. Myoda Bates-stamped IEH011692	X*	X
509	6/13/2011	Email from D. Alfi to B. Cummings RE: Jim Byron Travel Bates-stamped IEH002936 – IEH002937	X*	X
510	6/13/2011	Email from B. Nadala to M. Samadpour and M. Samadpour and D. Alfi Bates-stamped IEH002946 – IEH002948	X*	X
511	6/30/2011	Email from A. Rasmussen (McCormick) to J. Byron RE: Agenda and Presenters for tomorrow's 11am meeting/presentation led by IEH laboratories Bates-stamped IEH010905 – IEH010906	X*	X
512	07/01/2011	Email from J. Byron to S. Myoda (cc: M. Samadpour, D. Alfi, B. Miksch, M. Hardin, M. Koohmaraie, and M. De La Zerda) re: Thank You Bates-stamped IEH011634	X*	X
513	07/07/2011	Email from J. Byron to R. Lawrence (McCormick) RE: Communications Update IEH010913 – IEH010915	X*	

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No.	Date	Description	Admissibility Stipulation*	Authenticity Stipulation
514	7/19/2011	Email from D. Alfi to J. Byron re: Texas Flight Bates-stamped IEH000159 – IEH000160	X*	
515	8/26/2011	Email from J. Byron to M. Samadpour RE: Salmonella Testing Bates-stamped IEH011452	X*	X
516	8/29/2011	Email from J. Byron to M. Samadpour RE: McCormick IEH Validation Meeting Summary Letter Bates-stamped IEH010987	X*	X
517	9/9/2011	Email from J. Byron to M. Samadpour Re: Nestle Bates-stamped IEH001518 – IEH001520	X*	X
518	9/13/2011	Email from M. Koohmaraie to M. Samadpour RE: Please read Bates-stamped IEH011693	X*	X
519	11/18/2011	Email from R. Lawrence (McCormick) to S. Myoda re: Meeting Summary Bates-stamped IEH011268	X*	X
520	11/24/2011	Email from J. Waite-Cusic to J. Van Arsdale (CC: M. Samadpour) Re: Fonterra USA and Los Banos Foods IEH010741 – IEH010743	X*	X
521		J. Byron Weekly Reports IEH002971 – IEH002975	X*	X
522	2011	Byron Job Search Emails January 2011 – September 9, 2011 Bates-stamped Byron 000060, Byron 000082, Byron 000084, Byron 000093, Byron 000095, Byron 000096, Byron 000097; and Byron 000098).	X*	X
523		AOAC International Methods Committee Guidelines for Validation of Qualitative and Quantitative Food Microbiological Official Methods of Analysis	X*	X

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No.	Date	Description	Admissibility Stipulation*	Authenticity Stipulation
		Bates-stamped BYRON_IEH000592 – BYRON_IEH000604		
524	January 11, 2012	AOAC Certificate of Performance Tested Status – Certificate No. 100701 – IEH E. coli O157, Stx- producing E. coli (STEC) with Intimin and Salmonella Test System Bates-stamped BYRON_IEH000640	X*	X
525	July 15, 2013	U.S. Department of Labor Occupational Safety and Health Administration Report of Investigation Bates-stamped BYRON_IEH012088 – Byron_IEH012091	X*	X
526		Ancera Documents Bates-stamped Ancera_0001 – Ancera_0011 Bates-stamped IEH012126 - 012130	X*	

*Plaintiff conditionally agrees to the admissibility of Defendant's exhibits pending written notice briefly stating any objections including the grounds thereof as reflected in the CLR 16.1 form of pretrial order by November 11, 2022.

Defendant reserves the right to offer additional exhibits at trial to the extent necessary to rebut evidence offered by Plaintiff or as justice may require. Defendant also reserves the right to rely on demonstrative exhibits not listed in the above table for use at trial.

IX. ACTION BY THE COURT

(a) This case is scheduled for trial before a jury on Nov. 14, 2022, at 1:30 PM.

(b) Trial briefs shall be submitted to the court on or before November 7, 2022.

(c) Jury instructions requested by either party shall be submitted to the court on or before

1 November 7, 2022. Suggested questions of either party to be asked of the jury by the court on
2 voir dire shall be submitted to the court on or before November 7, 2022.

3 This order has been approved by the parties as evidenced by the signatures of their
4 counsel. This order shall control the subsequent course of the action unless modified by a
5 subsequent order. This order shall not be amended except by order of the court pursuant to
6 agreement of the parties or to prevent manifest injustice.
7

8 DATED this 3rd day of November, 2022.

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10 The Honorable John J. Chun
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1 /s/ Stephani L. Ayers

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